IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

OP.No. 25236 of 1999(D)

PETITIONERS:

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1. **T.N.ANANTHAPADMANABHAN IYER, S/O.NARAYANA IYER, AGED 53 YEARS, ASST. MANAGER, KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD., MAMALA P.O., COCHIN 35.**

2. **S.GEE VARGHESE, S/O. V.G.SIMON, AGED 53 YEARS, ASSISTANT MANAGER, KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD., MAMALA P.O., COCHIN 35.**

3. **V.RADHAKRISHNAN, S/O. A .KARUNAKARAN NAIR, AGED 51 YEARS, PRODUCTION ENGINEER, KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD., MAMALA P.O., COCHIN 35.**

4. **C.J.VIJAYARAJ, S.O.JOSHUA (LATE) AGED 51 YEARS, ASSISTANT MANAGER, KERALA ELECTRICAL AND ALLIED ENGINEERING CO. LTD., MAMALA P.O. COCHIN 35.**

5. **M.S.CHITHRANGATHAN, S/O. R.SANKARAN, AGED 53, ASSISTANT MANAGER , KERALA ELECTRICAL AND ALLIED ENGINEERING CO. LTD., MAMALA P.O., COCHIN 35.**

6. **MOHANDAS K.R., S/O.K.N. RAMAKRISHNAN PILLAI, AGED 51 YEARS, ASSISTANT ENGINEER, KERALA ELECTRICAL AND ALLIED ENGINEERING CO. LTD., MAMALA P.O., COCHIN 35.**

7. **B.GOPINATHAN PILLAI, S/O. BHASKARA PILLAI , AGED 57 YEARS, ENGINEER (STORES0, KERALA ELECTRICAL ALLIED ENGINEERING CO. LTD., MAMALA P.O., COCHIN 35.**

BY ADV. SRI.M.R.RAJENDRAN NAIR

O.P. NO.25236/1999

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY SECRETARY TO GOVERNMENT OF KERALA, DEPARTMENT, OF INDUSTRIES, SECRETARIATE, TRIVANDRUM.**

2. **THE KERALA ELECTRICAL AND ALLIED ENGINEERING CO.LTD., REP.BY ITS CHAIRMAN AND MANAGING DIRECTOR, K.S.H.B. OFFICE COMPLEX, PANAMPILLY NAGAR, COCHIN 16.**

3. **THE KERALA STATE INDUSTRIAL ENTERPRISES LTD., ST.JOSEPH'S PRESS BUILDINGS, COTTON HILL, TRIVANDRUM 4.**

4. **THE ACCOUNTANT GENERAL, TRIVANDRUM , KERALA.**

BY ADV. SRI.ANTONY DOMINIC
SRI.SUNILNATH
GOVERNMENT PLEADER SRI.SURARSHAN
SRI.B.S.KRISHNAN, SC, KEL
SMT.LATHA KRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.42489/1999 IN OP. NO.25236/1999

DISMISSED

10.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1(a):- COPY OF THE ORDER NO.13950/D1/98/ID DT. 6.8.99 ISSUED BY 1ST RESPONDENT.

EXT.P1(b):- COPY OF THE NOTICE NO.GMPA/73/2197.99 DT.30.8.99 ISSUED BY DY. GENERAL MANAGER (P&A) TO 2ND PETITIONER.

EXT.P2:- COPY OF THE ORDER G.O.(Rt) NO. 223/82/ID DT.23.3.92 ISSUED BY JOINT SECRETARY.

EXT.P3:- COPY OF THE LETTER NO.PIR/69/82/225 DT.16.4.82 ISSUED BY MANAGER.

EXT.P4:- COPY OF THE LETTER NO.PIR/919 DT. 21.4.89 ISSUED BY GENERAL MANAGER.

EXT.P5:- COPY OF THE LETTER NO.FIN. 39/5772/91 DT.14.2.1991 ISSUED BY SENIOR FINANCE MANAGER, TO 2ND PETITIONER.

EXT.P6:- COPY OF THE JUDGMENT DT.10.6.97 IN OP. 4142/91 OF THIS HONOURABLE COURT.

EXT.P7:- COPY OF THE ORDER NO.G.O.(MS) NO.147/97/ID DT.8.10.97 ISSUED BY DEPUTY SECRETARY TO GOVERNMENT.

EXT.P8:- COPY OF THE MEMO NO.GMPA/73 DT. 18.3.98 ISSUED BY GENERAL MANAGER TO 4TH PETITIONER.

EXT.P9:- COPY OF THE REPRESENTATION DT.3,7,998 SUBMITTED BY 1ST , 2ND, 4TH AND 5TH PETITIONER TO THE CHAIRMAN & MANAGING DIRECTOR.

EXT.P10(1):- COPY OF THE REPRESENTATION DT.2.4.98 SUBMITTED BY PETITIONER TO THE HONOURABLE MINISTER FOR INDUSTRIES GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

EXT.P11:- COPY OF THE MEMO NO.GMPA/73/635/98 DT.13.5.98 ISSUED BY GENERAL MANAGER (PERSONNEL) TO THE 4TH PETITIONER.

EXT.P12:- COPY OF THE REPRESENTATION DT.20.5.98 SUBMITTED BY PETITIONER TO THE GENERAL MANAGER (PERSONNEL & ADMN.).

EXT.P13:- COPY OF THE REPRESENTATION DT.9.6.98 SUBMITTED BY 2ND PETITIONER TO THE CHAIRMAN & MANAGING DIRECTOR.

/TRUE COPY/

S. SIRI JAGAN, J.

O.P. No. 25236 OF 1999 D

Dated this the 10th day of January, 2007

J U D G M E N T

The petitioners were former employees of the 2nd respondent Company. They are aggrieved by Exts.P1(a) and P1(b) whereby the Government has directed to revise their fixation of pay consequent upon revision of pay and merger of DA in the basic pay and to recover the excess amount paid to them on the basis of the fixation adopted by the 2nd respondent Company. There was a pay revision/restructuring of pay for the managerial and supervisory personnel of the 2nd respondent Company with effect from 1.1.1979 as per Government Order dated 6.2.1981. As per the Government Order, a minimum of one increment on fitment on the revised scale was allowed to all officers, who were on the rolls as on 1.1.1979. But those, who were benefited by the said fixation, were granted their next annual increments as well in 1979 as has been granted prior to the revision instead of on 1.1.1980. Subsequently Government granted DA to the managerial personnel by Government Order dated 23.3.1982, by which a merger benefit of the quantum of DA at 272 points as was done in the case of Government employees was also allowed. Accordingly 27% of the DA subject to a minimum of Rs.108/- and a maximum of Rs.243/- was added to the basic pay subject to marginal adjustment so that the pay plus DA does not exceed Rs.2,400/-. However, when the revision as per the above

said G.Os. was effected, the basic pay had to be fixed above the maximum in the scale of pay in respect of the petitioners and other executives. Subsequently, on account of revision with effect from 1.7.1983 as per Government Order dated 1.7.1986 the pay had to be refixed again. As it was difficult to revise the pay of the officers based on the pay drawn by them in the pre-revised stage, the Company sought Government clarification in this regard. Pending Government clarification pay revision was effected to the managerial personnel with effect from 1.7.1983 with arrears from 1.4.1985. Pay revision to those officers whose basic pay exceeded the maximum was also implemented after getting an undertaking from each individual employee indicating their readiness to refund the excess amount if Government objected. Government by communication dated 2.7.1988 in fact objected to the same. Therefore, the matter was placed before the Board of Directors of the 2nd respondent Company, who considered the matter and took a resolution in its meeting held on 31.3.1989. This decision is contained in Ext.P4. Para 8 of Ext.P4 contains the decision in respect of the petitioners and other executives. As per the same, the Company decided that when the due quantum of DA is merged with the basic pay, the resultant pay should be fitted at appropriate stages in scale. If the amount after merger exceeds the maximum of the scale the basic pay should be fixed at the maximum of the scale and the balance amount was to be treated as personal pay which was to be adjusted in the

subsequent revision. In accordance with the said decision which was arrived at after taking into account the objections of the Government, the pay of the petitioners and other executives were fixed in accordance with the paragraph 8 of Ext.P4. However, now the Government has issued Ext.P1(a) and P1(b) orders directing the 2nd respondent Company to reverse the process refixing the salary of the petitioners and others and to recover the excess amount paid to them. The petitioners challenge Exts.P1(a) and P1(b).

2. The contention of the petitioners centres round a Division Bench decision of this court in ***Santhakumari Vs. State of*** Kerala [2005 (4) KLT 649] wherein a Division Bench of this court held that if an employee has received any amount contrary to a statutory provision the mistake is mutual and in such case, there is no statutory bar in recovering the amount and amount paid can be recovered depending upon the facts and circumstances of each case. The contention of the petitioners is that in fixing the pay of the petitioners in accordance with Ext.P4 decision there is no violation of any statutory rules whatsoever and the fixation was done consciously taking into account the fact that if done otherwise a section of the employees would be deprived of the actual revision benefits granted by the Government, since on refixation pursuant to revision their basic pay would exceed the maximum.

3. The counsel for the 2nd respondent would submit that since the pay revision was granted after getting an undertaking from each

individual employee indicating their readiness to repay the excess amount if Government objected, they cannot now go behind the undertaking to claim that the excess amount paid cannot be ecovered.

4. The Government Pleader would contend that there is nothing wrong in Ext.P1(a) or Ext.P1(b) since evidently the fixation of pay of the petitioners has been effected contrary to the normal rules of fixation of pay and since it is a mistake committed there is nothing wrong in recovering the excess paid.

5. I have considered the rival contentions in detail.

6. The only question which I am called upon to decide is as to whether the petitioner's contention that in view of the decision in ***Santhakumari Vs. State of Kerala*** [2005 (4) KLT 649] the respondents cannot now refix the pay and recover the amounts due from the petitioners. The question of refixation does not arise now since admittedly all the petitioners have now retired from service either voluntarily or on attaining superannuation. Therefore, the only remaining issue is as to whether the excess amount paid can be recovered from them. The relevant paragraph of **Santhakumari**'s decision is para 5 thereof which reads as under:

> " 5. In our view, if an employee has received any amount contrary to a statutory provision the mistake is mutual since the administration as well as the employee is bound by the statutory provision. Paying and receiving the amount contrary to the statutory provision is illegal. When a mistake is mutual that has to be shared by both the parties. Law would nullify such an action if the

> parties are mistaken on the same fact situation. In a case where the mistake is mutual, both the parties act on the same mistaken assumption. Person who pays the amount is on the legitimate belief that the person who receives the amount is entitled to receive it and the person who receives the amount is on the belief that he is entitled to receive the same. Mistake in such a situation, in our view, is mutual. Consequently same has to be set right in public interest unless there is statutory bar in recovering the amount."

This paragraph specifically lays down that if an employee has received any amount contrary to a statutory provision the mistake is mutual since the administration as well as the employee is bound by the statutory provision. There cannot be any question of such a mistake in this case because the 2nd respondent while effecting the revision of pay was aware of all these things and they consciously made the decision. The next question would be whether the fixation is contrary to any statutory provision. Neither the counsel for the 2nd respondent nor the Government Pleader could bring to my attention any statutory provision whereby a fixation as prescribed in paragraph 8 of Ext.P4 is wrong. Paragraph 8 reads as under:

> " 8. Under the circumstances you are requested to take steps to refix the pay of the Supervisory and Managerial personnel of your company on the following lines and the detailed statements showing the revised fixation and excess payments to be recovered may be forwarded to us immediately for onward transmission to Government/AG.
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> i) As the fixation of pay along with fitment benefit of one increment was due from 1.1.1979, the increments in the succeeding years

> would be due on 1st January unless disturbed by subsequent promotions. Hence the increments granted on other dates in 1979, 1980 and 1981 are to be adjusted while effecting re-fixation.
>
> ii) All supervisory and managerial personnel who were on the rolls as on 30.6.1981 are eligible for the merger benefit of 27% of pay. When the due quantum of DA is merged with the basic pay, the resultant pay should be fitted at appropriate stages in the scale. If the amount after merger exceeds the maximum of the scale, the basic pay should be fixed at the maximum of the scale and the balance amount is to be treated as personal pay, which is to be adjusted in the subsequent revisions."

In fact, it is common practice in pay fixation to provide for personal pay in appropriate case where consequent on pay revision the basic pay cannot be fitted in any stage in the scale of pay. Since there is no violation of any statutory rule in fixation of pay as done in the petitioner's case, going by the **Santhakumari**'s decision, I am of opinion that the amounts paid even if the same is in excess of the maximum in their scale of pay cannot now be recovered from the petitioners since neither is there any mistake in the fixation nor is there violation, if any statutory provision in such fixation. In that view, I quash Ext.P1 and Ext.P1(a).

The original petition is allowed as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.25236/99 D

J U D G M E N T

10th January, 2007